

**IN THE UNITED STATES DISTRICT COURT  
FOR THE SOUTHERN DISTRICT OF MISSISSIPPI  
SOUTHERN DIVISION**

**PERCY GATES, ET AL.**

**PLAINTIFFS**

**VS.**

**CIVIL ACTION NO. 1:06CV1193HSO-JMR**

**CROWLEY LINER SERVICES, INC., ET AL.**

**DEFENDANTS**

**ORDER AND REASONS DENYING PLAINTIFFS' MOTION TO STAY**

BEFORE THE COURT is Plaintiffs' Motion to Stay filed July 21, 2008 [40-1], in the above captioned cause. After consideration of the instant Motion, the record and pleadings on file, and the relevant legal authorities, and for the reasons discussed below, the Court finds that Plaintiffs' Motion to Stay must be denied.

Percy Gates, along with Leonard T. Marbry, III, Charles J. Meyer, David A. Lindsey, Danny E. Alderman, Rosemary J. Bacuzzi, Brian J. Bacuzzi, Glenn Chatham, Gene E. Nickels, Raquel Nickels, and Jackie Nickels filed the above captioned cause on November 26, 2006 [1-1]. Plaintiffs are property owners who allegedly suffered damage from Defendants' cargo shipping containers and paper rolls entering their property when Hurricane Katrina struck the Mississippi Gulf Coast on August 29, 2005.

On July 5, 2007, the Court entered an Order consolidating all discovery and non-dispositive matters involving the remaining named Plaintiffs in the above captioned cause with *Charlotte Williams v. Crowley Liner Services*, Cause No. 1:06cv658. [27-1]. Subsequently, Plaintiffs moved for and were granted additional time to file individual

complaints:

TEXT ORDER ONLY granting Motion for Extension of Time to File Individual Complaints. Plaintiff must file the individual complaint on or prior to February 1, 2008. No further written order shall be issued by this Court.

Ct. Order (January 9, 2008).

In addition, following an in-person status conference, Chief United States Magistrate Judge John Roper entered the following order in the *Williams* case:

The Court finds that on or prior to September 21, 2007, with respect to the cases of *Bohlke v. Chiquita*, case civil action number 1:06cv974BAF-JMR and *Gates v. Chiquita*, civil action number 1:06cv1193BAF-JMR that these matters should be severed. Plaintiffs are ordered to file complaints in the new civil actions and pay filing fees for each severed case. The Clerk of Court is ordered to sever these matters as new complaints are filed. On or prior to Spetember [sic] 21, 2007, Plaintiff is ordered to file a Motion to Dismiss with prejudice as to any case within the aforementioned matters that is not severed.

Ct. Order (September 4, 2007).

On February 20, 2008, Crowley filed a Motion to Dismiss with Prejudice [31-1] stating in part that “Plaintiffs have willfully failed to comply with Judge Roper’s Order dated September 4, 2007, to dismiss their claims with prejudice or to file individual complaints. . . . Crowley respectfully requests that this Honorable Court enter an Order of Dismissal With Prejudice against the remaining Plaintiffs, Percy Gates, Jackie Nickels, Leonard T. Marbry, III, Rosemary J. Bacuzzi and Brian J. Bacuzzi.” Crowley’s Mot. to Dismiss with Prejudice at p. 3.

On February 21, 2008, Plaintiffs filed a Motion to Dismiss without Prejudice [34-

1] requesting once again that the Court not require that individual complaints be filed:

[i]n spite of the best efforts of Honorable Jim Davis, some of the Plaintiffs herein have failed to maintain regular contact with Honorable Jim Davis, and have only sporadically, if at all, made any effort to assist in the pursuit of their claims herein. Some of said Plaintiffs have repeatedly failed or refused to keep appointments with Honorable Jim Davis, or to respond to correspondence from Honorable Jim Davis requesting information necessary to support their claims herein. The statute of limitations has not yet expired for the Plaintiffs herein. Honorable Jim Davis seeks to preserve his right to file individual complaints within the statute of limitations time frame.

Pls.' Mot. to Dismiss at pp. 1-2.

Plaintiffs reiterated the same reasoning for not filing individual complaints in their Response to Defendants' Motion to Dismiss with Prejudice [37-1], which Plaintiffs filed on March 10, 2008. *See* Resp. to Mot. to Dismiss at pp. 1-2.

On July 14, 2008, the undersigned entered an Order [39-1] directing counsel for Plaintiffs to either file individual complaints or inform the Court if they are electing to not file individual cases no later than July 21, 2008. The Court's Order was clear, and did not offer Plaintiffs the option of instead filing a motion for a stay. Plaintiffs were advised that failure to abide by the terms of the Order could result in dismissals with prejudice. Notwithstanding the fact that Plaintiffs have been afforded ample additional time and numerous opportunities to file individual complaints, the Court will advance counsel for Plaintiffs one final opportunity to file individual complaints on behalf of Jackie Nickels, Leonard T. Marbry, III, Rosemary J. Bacuzzi and Brian J. Bacuzzi.

**IT IS, THEREFORE, ORDERED AND ADJUDGED** that, for the reasons

stated more fully herein, the Plaintiffs' Motion [40-1] to Stay filed on July 21, 2008, should be and is hereby **DENIED**. Plaintiffs shall file any and all remaining individual Complaints on or before July 31, 2008, or the Court will dismiss these Plaintiffs' claims with prejudice.

**SO ORDERED AND ADJUDGED**, this the 24<sup>th</sup> day of July, 2008.

*s/ Halil Suleyman Ozerden*  
HALIL SULEYMAN OZERDEN  
UNITED STATES DISTRICT JUDGE